

AMENDMENT TO THE DRAWINGS

Replacement sheets are provided in Appendix A to this response. Annotated
Marked-Up Copies are provided in Appendix B to this response.

REMARKS

The Office Action has rejected claims 1-26 pending in the present application. Reconsideration of the application as amended is respectfully requested.

A. Drawing Rejections

The Office Action rejected the drawings for failing to include reference numerals 230, 234, 236, 238, 242, 244, 246, 248, and 252. Furthermore, the drawings were objected to because in Fig. 8 reference numeral 232 should have been reference numeral 230 and in Fig. 11 the box labeled as S1 should have been labeled as S2. The Applicants have amended the drawings in light of the Office Action suggestions. The new drawings are included as Replacement Sheets in Appendix A and the changes are highlighted in the Annotated Marked-Up Copies in Appendix B.

B. Specification Rejections

The abstract of the disclosure was objected to for including legal jargon of “means” in lines 3 and 5-7. The applicants have amended the abstract to remove all use of “means” in response to the suggestion of the Office Action.

In addition, the disclosure was further objected because of typographical informalities on pages 4, 9, 18, 21, and 25 of the specification. The Applicants have amended the specification in accordance with each suggestion in the Office Action.

C. Claims Rejections Under 35 U.S.C. 102(b)

Claims 1-26 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,429,092 to Kamei (hereinafter the “Kamei reference”). Furthermore, the Office Action rejected claims 1-26 under 35 U.S.C. 102(b) as being anticipated by Machida et al. ‘092. By looking at the Notice of References Cited, it is seen that there is

two Machida references cited in that notice and neither of these references have the numbering assigned by the Office Action. In the prior art citation section, however, the Office Action noted that Machida '331 was relied upon but not considered pertinent to applicant's disclosure. Therefore, the applicant concludes that the Examiner intended to mean U.S. Patent No. 6,209,598 to Machida et al when citing its 102(b) reference and responds based upon that assumption.

Anticipation requires that each and every limitation of the claim be disclosed by the prior art reference. The features of claim 1 include "incrementally adjusting an amount of fuel provided to the engine as a function of the idle status signal and the rotational speed of the engine in response to the failure." Nowhere in the Kamei reference or the Machida reference does it teach such features. Indeed, merely listing various controls and sensors of these references that may be in common with one or more embodiments of the present application fails to establish the claimed operational features of claim 1. "Every element of the claimed invention must be literally present, arranged as in the claim." Richardson v. Suzuki Motor Co. Ltd., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The claims must not be treated as "mere catalogs of separate parts, in disregard of the part-to-part relationships set forth in the claims and that give the claims their meaning." Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Company et al., 730 F.2d 1452, 1459, 221 USPQ 481, 486 (Fed. Cir. 1984). As a result, a reference that coincidentally lists features of a claim without describing the claimed arrangement, relationship, and organization of such features cannot anticipate. The Office Action rejection asserts nothing more than a mere catalog of parts.

Concerning the Machida reference, the Office Action relies on disclosure of the crank signal sensor 2 to provide a signal to help detect the rotational speed to the engine. However, the Machida reference fails to teach that the rotational speed of the engine is used to incrementally adjust the amount of fuel provided to the engine in response to a failure of vehicle sensors. In fact, the Machida reference appears to embrace the opposite, because in columns 10-14 of this reference fail-safe operation is based on factors other than rotational speed of the engine.

The Kamei reference also fails to teach incrementally adjusting the amount of fuel provided to the engine as a function of the idle status and the rotational speed of the engine in response to a failure. When there is no malfunction detection signal (i.e. a failure), column 6, lines 50-59 teaches that the opening of the throttle is based on the rating conditions such as the engine revolutions. However, a close inspection of column 7 and column 8 reveals that the Kamei reference fails to teach adjusting the throttle based on the engine revolutions in the situation of a failure. Therefore, the Kamei reference does not anticipate claim 1.

Claims 2-8 depend from claim 1 and therefore include all of its limitations. It is therefore respectfully submitted that claims 2-8 are allowable over the references of record for at least the same reasons provided with respect to claim 1. To illustrate one of many additional reasons, claim 3 further provides that "incrementally adjusting includes determining the amount of fuel as a function of a vehicle speed value." Neither the Kamei reference nor the Machida reference teaches determining the amount of fuel as a function of rotational speed and vehicle speed during failure.

Independent claim 9 includes the features of “operating the engine after the failure in response to a second operator-adjusted fueling control to selectively move the vehicle at a greater speed than permitted with the first operator-adjusted fueling control.” Neither the Machida reference nor the Kamei reference teach a second operator-adjusted fueling control. Moreover, neither reference discloses or suggests operating the engine after the failure in response to a second operator adjusted fueling control to selectively move the vehicle at a greater speed than permitted with the first operator-adjusted fueling control. Therefore, claim 9 is allowable over the Machida reference and the Kamei reference.

Claims 10-12 depend from claim 9 and therefore are allowable for at least the same reasons as provided for claim 9. Additional grounds support allowability of claim 11. Claim 11 includes “wherein the second operator adjusted fueling control includes a cruise control for a vehicle.” Neither the Machida reference nor the Kamei reference teaches a second operator adjusted fueling control much less a cruise control.

As to independent claim 13, its features include “a cruise control responsive to the operator of the vehicle.” As mentioned *supra*, neither the Kamei reference nor the Machida reference teach such features. Dependent claims 14-17 all depend from claim 13 and are allowable for at least the same reasons as base claim 13.

Independent claim 18, as amended, includes the feature of “fueling the engine based on a limp-home mode of operation in accordance with the idle status and the rotational speed of the engine.” As discussed with reference to claim 1, neither of the cited references teach these features of the claim. Therefore, the claim as amended is also allowable over the cited references. Dependent claims 19-22 all depend from independent claim 18 and are allowable for at least the same reasons.

Independent claim 23, as amended, includes the feature of “the controller generating the engine fueling signal as a function of the idle status signal and the rotational speed of the engine during the failure accommodation mode of operation.” As discussed with respect to independent claims 1 and 18, neither the Machida reference nor the Kamei reference teach these features. Claims 24-25 depend from independent claim 23 and are allowable for at least the same reasons.

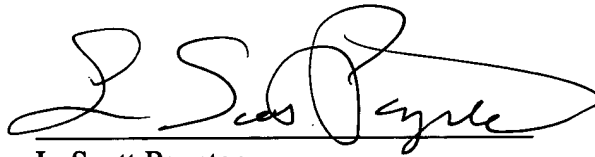
Claim 26 includes “said operating means including means for fueling the engine during the limp-home mode of operation in accordance with idle position of the pedal, the rotational speed of the engine, and the brake status.” As discussed with respect to certain independent claims previously, neither the Machida reference nor the Kamei reference teach such features. It is therefore respectfully submitted that claim 26 is allowable over the references of record.

D. Conclusion

Accordingly, is believed that claims 1-26 are in condition for allowance.

Reconsideration of the present application as amended is respectfully requested. The Examiner is invited to telephone the undersigned to address any outstanding matters concerning the present application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Scott Paynter", written over a horizontal line.

L. Scott Paynter
Reg. No. 39,797
Woodard, Emhardt, Moriarty, McNett & Henry
Bank One Tower/Center
111 Monument Circle, Suite 3700
Indianapolis, IN 46204
(317) 634-3456

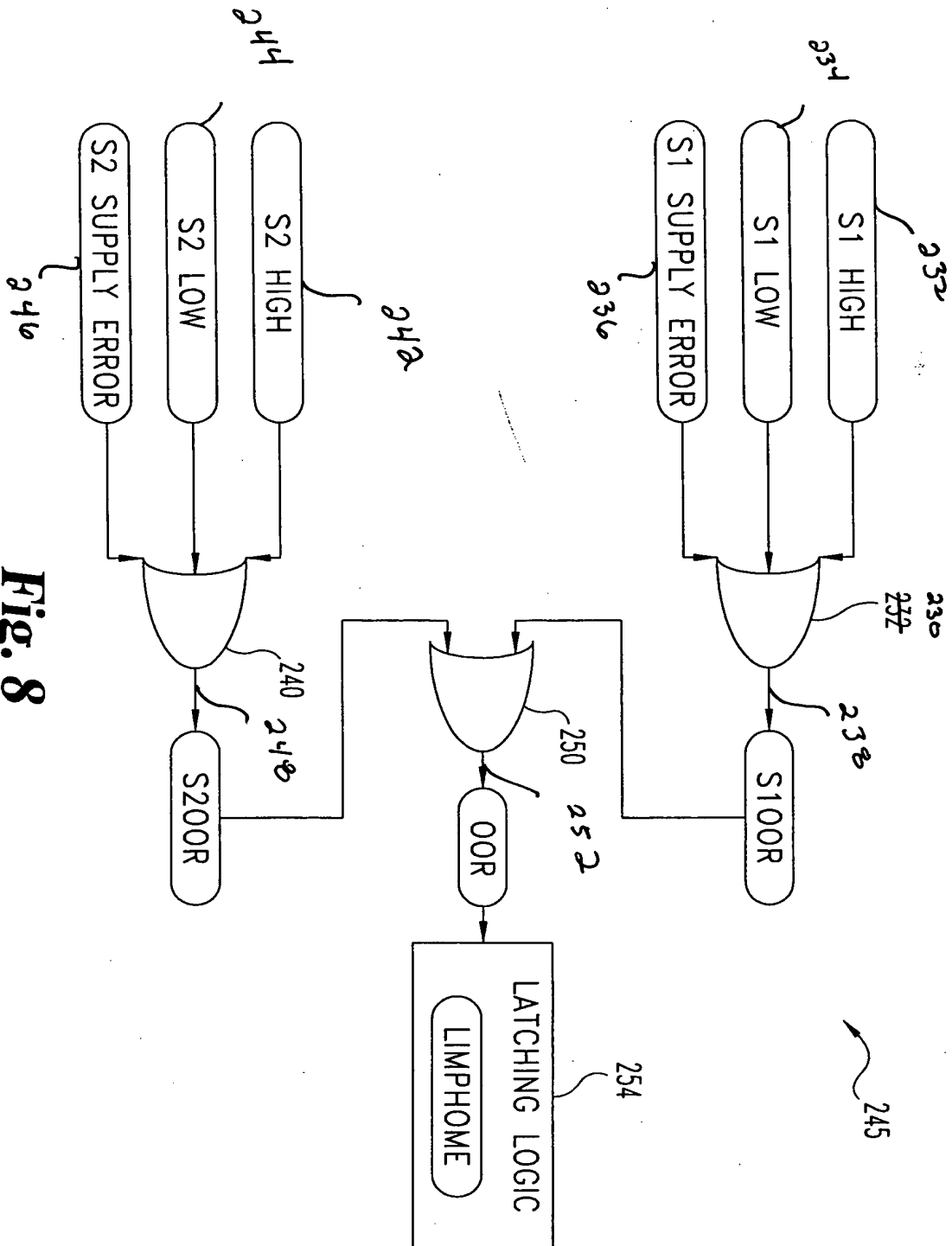


Fig. 8

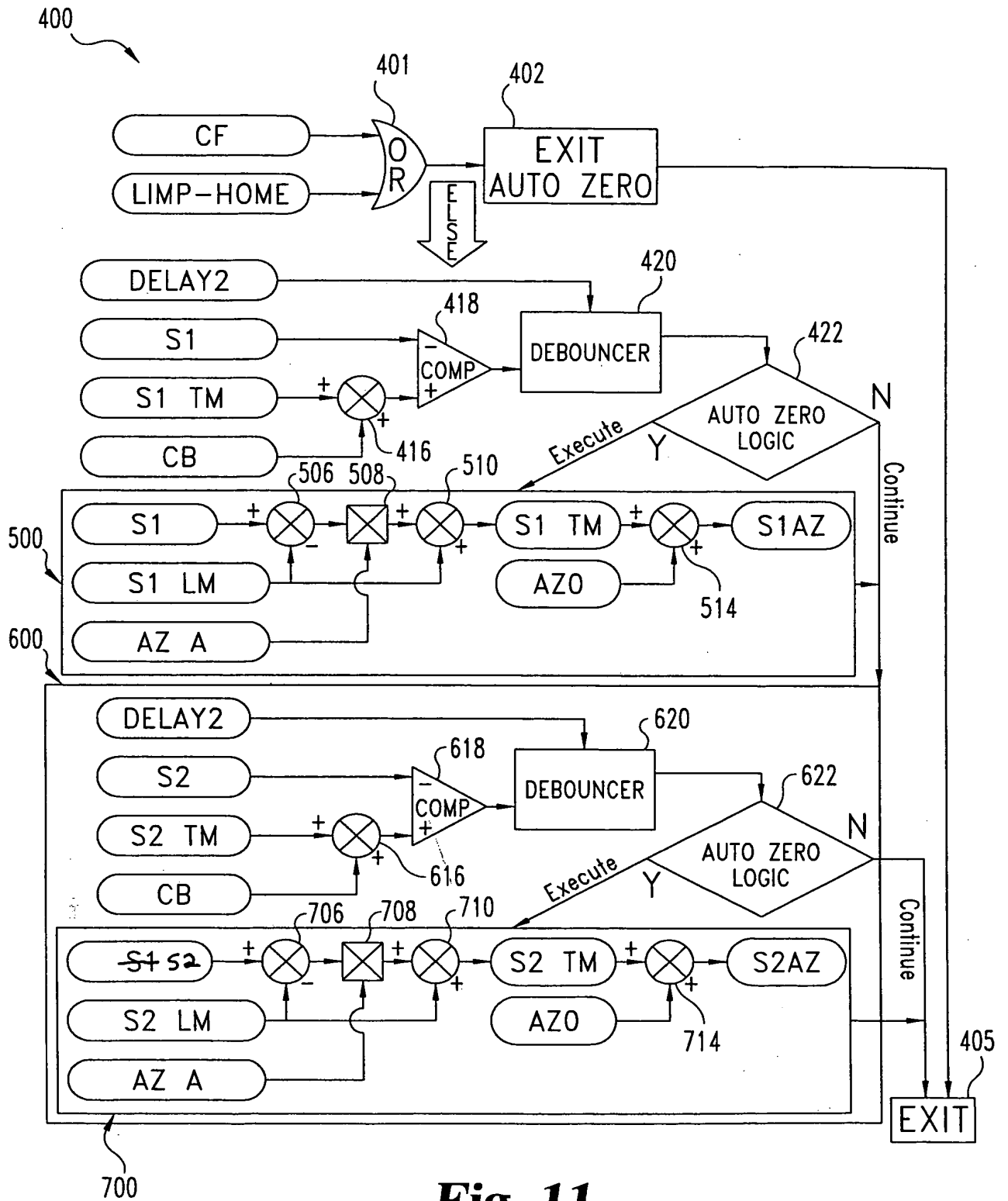


Fig. 11